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CHARLES E. HASTINGS, CLERK

Supreme Court of the United States
OCTOBER TERM, 1912

No. 528

O. L. HASTINGS, *et al.*,

Petitioners,

v.

SELBY OIL & GAS COMPANY, *et al.*,

Respondents.

**PETITION OF O. L. HASTINGS AND C. F. DODSON
FOR REHEARING**

W. EDWARD LEE,
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Hastings and C. F. Dodson.*

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To said Honorable Court:

Now come O. L. Hastings and C. F. Dodson, Petitioners and, petitioning for rehearing, pray that the Court's judgment rendered and entered herein on May 24, 1943, reversing the decision of the Fifth Circuit Court of Appeals and remanding this cause with instructions to dismiss the complaint, be set aside and that they be granted a rehearing and on rehearing the judgment of the Fifth Circuit Court of Appeals be reversed and the judgment of the trial court be affirmed, and therefor say:

GROUND OF PETITION

The court erred in failing and refusing to pass upon the merits of this controversy, and in failing and refusing

to reverse the judgment of the Fifth Circuit Court of Appeals and affirm the judgment of the trial court in favor of petitioner.

REMARKS

No question of State's rights is involved; yet the decision is made to turn upon prevention of friction between the State and the Federal judiciary.

The author is a part of that section of the country that has demonstrated time and again its adherence to the doctrine of State's rights, but the pervading thought in that same section is that powers conferred upon the Federal Government in precise wording in the Constitution were put permanently beyond the state and federal agencies. That written into the Constitution became and is the fundamental law of the land—until changed by amendment by the people and not by any court. On the Federal Judiciary, created by Article III of the Constitution, was conferred judicial power in both law and equity cases (without distinction) over controversies "between citizens of different states." The right to proceed in a federal court where diversity exists is a legal right, vouched by the fundamental law of the land.

This Court is a creature of the same document that creates a right in litigants to go into federal courts where diversity of citizenship exists. We have been unable to find any warrant therein for the court to deny a litigant the rights afforded thereby. We believe none exists.

Whether this Court may legislate in respect to matters over which the Congress has persistently abstained is one thing; whether it may deny suitors rights plainly vouched by the Constitution is another and of even greater import. The Constitution conferring jurisdiction in law and equity cases alike, without distinction, where is language to be found that makes it discretionary with the Court to deny suitors access to federal courts on the ground that the controversy is one in equity? Can it be that the power of the Court, sitting as Chancellors, transcends the Constitution? Is this Court at liberty to grant or withhold rights vouched litigants by the Constitution?

Even if the prosecution of diversity proceedings can be said to constitute an interference with "independence of State governments in carrying out their domestic policy", such independence was yielded up and parted with by the terms of the Constitution of the United States. The States, like all others, are bound by the provisions of the Federal Constitution and are presumed to act with knowledge just as are others.

This case was tried on the merits and judgment was rendered and entered against respondents, denying the relief prayed. It is respectfully submitted that this court should exercise its jurisdiction and reverse the judgment of the Fifth Circuit Court of Appeals, and affirm the judgment of the trial court.

This petition is presented in good faith and not for delay. A copy of same has been delivered to the Honorable Dan

Moody, attorney for respondents, and to the Attorney General of Texas, attorney for the Railroad Commission and its members.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 528.—OCTOBER TERM, 1942.

O. L. Hastings, et al., Petitioners,	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.
vs.		
Selby Oil & Gas Company, et al.		

[May 24, 1943.]

Mr. Justice BLACK delivered the opinion of the Court.

This is an action in the nature of an equity proceeding brought by the respondents to cancel an order of the Texas Railroad Commission granting petitioners Hastings and Dodson a permit under Rule 37 of the Railroad Commission to drill an oil well. The Respondents contend that the order granting a permit to the petitioners deprives them of property without due process of law, and that the order is invalid as a matter of Texas law. Jurisdiction is rested on diversity of citizenship.

There are no significant differences between the problems presented here and those in *Burford v. Sun Oil Co.*, decided this day. For the reasons set forth in that opinion, the decision below is reversed and the cause is remanded with instructions to dismiss the complaint.

It is so ordered.

The CHIEF JUSTICE, Mr. Justice ROBERTS, Mr. Justice REID, and Mr. Justice FRANKFURTER dissent for the reasons stated by them in dissent to *Burford v. Sun Oil Co.*, Nos. 495 and 496.